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July 2, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation -- CC Docket No. 96-61

Dear Mr. Caton:

Today I provided the attached letter to James Schlichting, Chief, Competitive Pricing Division, Common Carrier Bureau, and other Bureau personnel as noted on the letter.

Two copies of this Notice, along with the attached letter, are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

cc: J. Schlichting
S. Ismail
N. Fried

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July 2, 1996

James Schlichting
Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street N.W.
Room 518
Washington, D.C. 20554

Re: CC Docket No. 96-61

Dear Mr. Schlichting:

In the above-referenced proceeding, the Commission is proposing to establish the rules and procedures to extend rate integration between the U.S. mainland and U.S. possessions and territories, such as Guam and the Commonwealth of the Northern Mariana Islands ("CNMI"). This letter provides additional information as to why current cost arrangements for international facilities between U.S. carriers and their correspondents should not be changed at this time, and also details the Commission's legal authority to insure that U.S. carriers are not whipsawed into paying a disproportionate share of international facilities costs.

The Communications Act of 1934, as amended, grants the Commission ample authority to prevent unreasonable practices that harm U.S. customers and injure the public interest. Section 201 and Section 214 of the Act authorize the Commission to review cost allocation practices for international facilities between U.S. carriers and their international correspondents and to require those practices to be just, reasonable and in the public interest.[1]

Rate integration of common carrier services between the U.S. mainland and Hawaii, Alaska, and Puerto Rico/Virgin Islands was accomplished by the Commission 20 years ago.[2] Since that time, significant transmission capacity has been put into service between the U.S

[1] 47 U.S.C. §§ 201, 205, 214 (1996).

[2] See Integration of Rates and Services, 61 FCC 2d 380 (1976).

mainland and those offshore points. In most cases, particularly with fiber optic cables, the transmission facility consists of a joint use cable, where the cable system carries both domestic and international traffic. The specific circuits of the cable system assigned for "domestic" use are paid for by the individual U.S. carrier(s) owning and using the capacity. The specific circuits assigned for "international" traffic are jointly paid for by a U.S. carrier and a foreign correspondent, with each carrier paying 50% of the overall circuit cost. Such dual use cables have been frequently approved by the Commission over the past ten years and those cables remain in operation today. For example, HAW4/TPC3 was authorized by the Commission in 1986, and provided for both wholly-owned U.S. circuits for domestic use between the mainland and Hawaii, and jointly owned international circuits between the mainland U.S. and international points.[3] In addition, the HAW-5, TCS-1/Florico, Americas-1, and Columbus-II cable systems provided for similar dual use of a fiber optic cable.[4] In those cable systems, foreign correspondents paid for one-half of the international facilities cost between the foreign point and the U.S. mainland, despite an intermediate landing point in a non-mainland U.S. location.

Over the past five decades, beginning with the MacKay Radio decision in 1936,[5] the Commission has regulated the arrangements between U.S. carriers and their foreign correspondents in order to ensure that foreign carriers do not use bargaining power created by their favored national position to obtain unduly favorable terms and conditions in their relations with U.S. carriers to the detriment of U.S. callers. In MacKay, the Commission denied a Section 214 application because it found an attempt by the Norwegian telephone administration to maximize its revenues by whipsawing U.S. carriers was a predictable consequence of the asymmetric market power found in foreign markets. Further, the Commission determined that the protection of U.S. carrier interests fell within the general powers mandated to the Commission by Congress.[6]

The recent asymmetrical liberalization of telecommunications markets has created a situation where monopoly foreign carriers can be expected to continue to attempt to shift the benefits of competition from the U.S. carriers to themselves. As stated in MacKay Radio, "[t]o expect the Telegraph Administration to play the competing companies [in the U.S.]

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3 File No. ITC-85-219, Mimeo No. 1794 (Com. Car. Bur. Released January 7, 1986).

4 HAW-5 Order, File No. ITC-90-081 released December 10, 1990; TCS-1 Order, 3 FCC Rcd 6073 (1988); Americas-1 Order, 8 FCC Rcd. 5287 (1993); Columbus II Order, 8 FCC Rcd 5263 (1993).

5 MacKay Radio and Telegraph Co., Inc., 2 FCC 592 (1936) (MacKay Radio).

6 The normal application of the Commission's protections against whipsawing generally arises in the context of International Settlements Policy (ISP) proceedings. In several cases, the Commission invoked the anti-whipsawing provisions of the ISP to refuse to allow for non-cost based increased in accounting rates, despite pressure from foreign correspondents in Spain and the United Arab Emirates. See American Telephone and Telegraph Co., MCI Communications Corp., 5 FCC Rcd 4618 (1990); American Telephone and Telegraph Co. v. MCI Communications Corp., 9 FCC 2688 (1994).

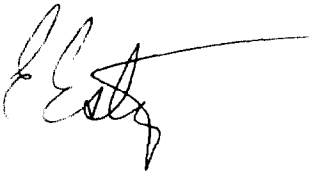
against one another is simply to expect that the administration will be headed by good businessmen, loyal to their national interests. To rely upon companies which are bitter competitors not to make concessions to the administration which controls all outgoing radio-telegraph traffic is to provide an exceedingly tenuous basis upon which to rest the public interest."[7]

The Commission has recently moved swiftly and strongly to protect against whipsawing and discrimination in International Settlements Policy matters involving Bolivia, Peru and Argentina.[8] In the Argentina Order, the Commission recognized the whipsawing effect of a foreign carrier's attempt to control a U.S. carrier's facilities-planning decision and stated "we also find that Telintar's refusal to provide WorldCom with adequate facilities constitutes whipsawing and, therefore, cannot be allowed to continue."[9] As the Commission finalizes its policies for rate integration for Guam and CNMI, the Commission should clarify that its rate integration procedures are not an invitation for foreign carriers to attempt to whipsaw U.S. carriers into paying a disproportionate share of international facilities costs.

Finally, in AT&T's previous letter of June 19, AT&T requested that any decision adopting rate integration for Guam and CNMI should explicitly provide that AT&T and other U.S. carriers are not obliged to accept foreign traffic destined for the mainland in Guam or CNMI. We emphasize that any final decision lacking such explicit direction could have the unintended effect of shifting several hundred million dollars of existing and future cost in international facilities from foreign carriers to U.S. carriers.

Thank you for your consideration. If you have any questions or need additional information, please contact me.

Sincerely,



cc: Sherille Ismail
Neil Fried

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7 Id. at 599.

8 In the Matter of AT&T Corp., MCI Telecommunications Corp., Sprint, and LDDS WorldCom, Accounting Rates with Peru File Nos. USP-95-W-435, ISP-96-W-030, ISP-96-W-136, ISP-96-W-141, released May 7, 1996; In the Matter of AT&T Corp., MCI telecommunications Corp., Accounting Rate with Bolivia, File Nos. USP-95-W-280, ISP-96-W-152, released May 7, 1996; Extension of Accounting Rates with Argentina, ISP-96-W-062, released March 18, 1996 (Argentina Order).

9 Argentina Order at ¶13.